allowed.[9] There is, however, good authority for the holding that subrogation will not be allowed one who has discharged an incumbrance with constructive notice of an intervening claim.[10]

In the principal case, the further element of fraud was present; the court holding that the grantee was not, through constructive notice, chargeable with such participation in the fraud on the judgment creditor as would defeat his right to subrogation. One guilty of fraud has no right to equitable relief by subrogation.[11] The question here presented is whether one who has constructive or implied notice of the fraud is chargeable with participation in it, and it is quite generally held that constructive notice has this effect.[12] A few jurisdictions, however, including Colorado, seem to differentiate between constructive notice by record, and knowledge of facts sufficient to put a reasonable man on inquiry, holding that the former does not as a matter of law charge one with participation, though the latter may raise a question of fact for the jury as to participation in the fraud.[13]

PRIORITY OF JUDGMENT LIENS ON REAL ESTATE.—At common law, a judgment created no lien on real estate,[1] but the effect of the Statute of Westminster II, 13 Edw. I, c. 18, was to make all judgments liens on the debtors' lands from the first day of the term at which they were rendered.[2] That rule has since been changed by modern statutes, upon which judgment liens now depend and under which they date from the time when the judgments are docketed,[3] or entered,[4] and in some States from the time of their rendition.[5] These statutes are of substantially the same effect, for even under the last mentioned a judgment is not considered to have been rendered so as to constitute a lien until it has

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[9]See cases cited in note 3, *supra*; Neff *v.* Elder (1907) 84 Ark. 277.

[10]Ragan *v.* Standard Scale Co. (1907) 128 Ga. 544; Kitchell *v.* Mudgett (1877) 37 Mich. 81; Stastney *v.* Pease (1904) 124 Ia. 587; Kahn *v.* McConnell (1913) 37 Okla. 219; *cf.* Conner *v.* Welch (1881) 51 Wis. 431.

[11]Railroad Co. *v.* Soutter (1871) 13 Wall. 517; see Harris, Law of Subrogation, § 813.

[12]German Bank of Memphis *v.* United States (1893) 148 U. S. 573; Kansas Moline Plow Co. *v.* Sherman (1895) 3 Okla. 204; Salisbury *v.* Burr (1896) 114 Cal. 451; Moore *v.* Williamson (1888) 44 N. J. Eq. 496.

[13]Riethmann *v.* Godsman (1896) 23 Colo. 202; Greenwald *v.* Wales (1903) 174 N. Y. 140; see Carroll *v.* Hayward (1878) 124 Mass. 120. In the principal case, whereas the majority of the court finds mere constructive notice by record, the dissenting judge seems to think the attempted subrogee was in possession of facts which should have put him on inquiry, and that a former holding of the Supreme Court in the same case (44 Colo. 94) that this was sufficient to charge him with fraud, should be binding on this court in determining the right to subrogation.

[1]1 Black, Judgments (2nd ed.) § 397.

[2]See Savile *v.* Wiltshire (1746) 2 Barnes 212. For the various exceptions that were made to this rule, see 1 Black, Judgments (2nd ed.) §§ 441, 442.

[3]N. Y. Code Civ. Proc., § 1250; Cal. Code Civ. Proc., § 671; Minn. Gen. Stat., c. 77, § 7905.

[4]3 N. J. Comp. Stat. (1910) 2956, § 2; Fla. Gen. Stat. (1906) § 1600.

[5]1 Burns' Ann. Ind. Stat. (Rev. of 1908) § 635; Code of Ia. (1897) § 3801; Mo. Rev. Stat. (1909) §2125.

been properly entered of record.[6] Accordingly, the judgment that is first recorded in the manner prescribed has the prior lien.[7] But when two or more judgments are entered on the same day, unless it is required by statute that the exact time be noted,[8] they will, by a survival of the old fiction, relate to the earliest possible part of the day, and as inferior evidence cannot be admitted to explain the record, the liens created by them all are equal.[9] Between a judgment and a conveyance, however, since the precise time of delivery of the latter is provable by evidence *in pais*, justice requires that the actual priority of the judgment may be shown by less than record proof.[10] Consequently, when a deed has been recorded a day or more before the judgment was docketed, no lien ever attaches to the land.[11] When, on the other hand, the judgment has been docketed before the conveyance has been placed upon record, though after its execution, it is generally held that, under the recording acts, a conveyance is of no effect as against the lien of the judgment.[12] In many States, however, a different interpretation is placed upon the acts, the courts saying that the conveyances are valid without being recorded, and that the judgment creditor cannot be protected as a subsequent purchaser for value because he has furnished no new consideration for his judgment.[13]

At a very early date, it was settled in Pennsylvania that lands acquired after a judgment was obtained, but aliened before execution issued, were not subject to the judgment's lien,[14] and this view was adopted in two other jurisdictions.[15] The holding is contrary to the

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[6]Callanan *v.* Votruba (1898) 104 Ia. 672; see McKenna *v.* Van Blarcom (1901) 109 Wis. 271.

[7]Hagadorn *v.* Hart (N. Y. 1891) 62 Hun 94; Glasgow *v.* Kann (1895) 171 Pa. 262.

[8]See N. Y. Code Civ. Proc., § 1246; Bates *v.* Hindsdale (1871) 65 N. C. 423.

[9]Rockhill *v.* Hanna (1853) 15 How. 189; Bruce *v.* Vogel (1866) 38 Mo. 100; *contra,* Biggam *v.* Merritt (1831) 1 Miss. 430.

[10]Mechanics' Bank *v.* Gorman (Pa. 1844) 8 W. & S. 304; Hunt *v.* Swayze (1892) 55 N. J. L. 33. This is also true of a contest between a mortgage and a judgment. See Murfree's Heirs *v.* Carmack (Tenn. 1833) 4 Yerg. 270; *contra,* Hendrickson's Appeal (1855) 24 Pa. 363.

[11]Corley *v.* Renz (Tex. Civ. App. 1894) 24 S. W. 935; Bell *v.* Davis (1881) 75 Ind. 314.

[12]Smith *v.* Willard (1898) 174 Ill. 538; Frothingham *v.* Stacker (1847) 11 Mo. 77; Young *v.* Devries (1879) 72 Va. 304. But unless the judgment creditor is without notice, the conveyance will prevail. Adam *v.* Tolman (1899) 180 Ill. 61.

[13]Smith *v.* Savage (1896) 3 Kan. App. 556; Schroeder *v.* Gurney (1878) 73 N. Y. 430; Stanhilber *v.* Graves (1897) 97 Wis. 515. Even in such a case, a *bona fide* purchaser at a sale under execution on the judgment, acquires a title superior to that of the grantee of the unrecorded deed. Evans *v.* McGlasson (1864) 18 Ia. 150.

[14]Colhoun *v.* Snider (Pa. 1813) 6 Binney 135. To obtain a lien on such property, it is necessary that a levy be made. See Elsbree's Appeal (1884) 106 Pa. 82.

[15]Stiles *v.* Murphy (Ohio 1831) 4 Hammond 92; Harrington *v.* Sharp (Ia. 1848) 1 Greene 131. The rule has now been changed in Iowa by statute. See Code of Ia. (1897) § 3801.

rule of the common law,[16] and in a majority of the States to-day the lien of a judgment attaches not only to lands possessed by the debtor at the time of its docketing, but also to lands which he thereafter acquires.[17] In such a case, since no judgment against the debtor can affect the land until it does become his property, all those on record against him at that time attach as liens simultaneously; they all date from the vesting of title, and no one of them is entitled to priority though the judgment upon which it depends may have been docketed long before the others.[18]

Once it has been determined that several judgment liens are equal by virtue of their date of record or manner of commencement, the question then arises as to whether this equality may be disturbed by any subsequent proceedings of the judgment creditors. According to the weight of authority, superior diligence in bringing about the satisfaction of a particular claim secures for that one a preference.[19] In accordance with the principles laid down, is the decision in the recent case of *Hulbert* v. *Hulbert* (N. Y. Sup. Ct. 1914) 86 Misc. 662, in which an undivided share in certain real estate came by descent to one against whom several judgments had at different times before that been docketed; execution was issued upon one of the judgments, and a sale had thereunder during the pendency of the partition suit. It was decided that a holder of the sheriff's certificate of sale under the judgment was entitled to priority over the other judgment creditors in the distribution of the debtor's share of the proceeds of the partition sale. The courts will not, however, allow a senior judgment lien to be defeated by a sale under a junior,[20] and even though it be held that such a sale frees the property from the older lien, the latter is entitled to a prior satisfaction from the proceeds of the sale.[21]

Relief of Parties to an Illegal Contract.—All contracts which provide for the doing of acts that are against public policy, morality, or the law, are void and unenforcible.[1] The courts not only will not assist the parties to such agreements in attaining their unlawful ends, but generally refuse to afford relief of any sort to a complainant who, in establishing his cause of action, must of necessity set forth an

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[16]4 Kent, Comm., *435, 436.

[17]1 Black, Judgments (2nd ed.) § 432.

[18]Michaels *v.* Boyd (Ind. 1848) Smith 100; Cayce *v.* Stovall (1874) 50 Miss. 396; Matter of Hazard (N. Y. 1893) 73 Hun 22; see note to Moore *v.* Jordan (N. C. 1895) 42 L. R. A. 209, indicating a slight conflict of authority. But the judgment lien will be postponed to a purchase money mortgage given at the time of making the conveyance. Cowardin *v.* Anderson (1883) 78 Va. 88; Curtis *v.* Root (1859) 20 Ill. *53; Scott etc. Co. *v.* Warren (1857) 21 Ga. 408. A mortgage given at the same time for other than the purchase money, however, is subordinate to the judgment. Weil *v.* Casey (1899) 125 N. C. 356.

[19]Lowry *v.* Reed (1883) 89 Ind. 442; Adams *v.* Dyer (N. Y. 1811) 11 Johns. *347; Bruce *v.* Vogel, *supra*; *cf.*, as to after-acquired lands, Kisterson *v.* Tate (1895) 94 Ia. 665.

[20]The land may be resold to satisfy the older lien. Littlefield *v.* Nichols (1871) 42 Cal. 372; see Jackson *v.* Holbrook (1887) 36 Minn. 494.

[21]Matthews *v.* Nance (1897) 49 S. C. 389.

[1]2 Parsons, Contracts (9th ed.) *746.